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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529 - 2090



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FILE: [Redacted]
MSC-02-236-63504

Office: FORT SMITH

Date: MAY 04 2010

IN RE: Applicant: [Redacted]

APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000. Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Fort Smith. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant had not provided credible evidence to establish that he had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel states that the applicant entered the United States prior to January 1, 1982 and was physically present in the United States continuously through May 4, 1988. Counsel requested a copy of the record of proceedings under the Freedom of Information Act (FOIA). The record reflects that the FOIA request was closed on October 29, 2009. (NRC2009023836). No additional evidence or brief has been received into the record.

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet his burden of establishing that he (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

An applicant for permanent resident under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine

each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits written by friends and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The applicant claimed on his class determination form and his Form I-687 application that he first entered the United States without inspection on August 25, 1981.

The applicant submitted letters from [REDACTED] and [REDACTED] to establish his initial entry and residence in the United States during the requisite period. [REDACTED] states that he has known the applicant since 1981. [REDACTED] states that he has known the applicant for a long time and later when the applicant worked at [REDACTED] as a dishwasher and as a cook at [REDACTED]. The applicant does not claim to have worked at [REDACTED] as a dishwasher on his Form I-687. The witnesses attest to the applicant’s good moral character but provide no other information about the applicant.

The letters do not include sufficient detailed information about the claimed relationship and the applicant’s continuous residence in the United States since before January 1, 1982 and throughout the requisite period. For instance, neither of the witnesses supplies any details about the applicant’s life, such as, knowledge about his family members, education, hobbies, and shared activities. The letters fail to indicate any other details that would lend credence to the claimed acquaintance with the applicant and the applicant’s residence in the United States during the requisite period.

The letters do not provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the statements. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Therefore, the letters will be given nominal weight.

The remaining evidence consists of a pay stub for earnings from December 13-26, 1987 and three receipts. The receipt signed by [REDACTED] states that [REDACTED] received \$2,400 from the applicant for rent in 1989, which is outside the requisite period. The receipt also states that the applicant has been renting from [REDACTED] since 1985 but the rental address is not indicated. The other receipts from [REDACTED] and an unnamed business do not contain the applicant's name and address, and therefore, cannot be identified as belonging to the applicant. The evidence has minimal value. The evidence does not establish the applicant's continuous residence throughout the requisite period.

An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245A of the Act. 8 C.F.R. § 245a.2(d)(5). In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The insufficiency of the evidence calls into question the credibility of the applicant's claim to have entered the United States before January 1, 1982 and his continuous unlawful residence in the United States since such date and throughout the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

Moreover, the record reflects that the applicant was arrested on August 24, 1994 and charged with possession of a narcotic controlled substance. The applicant did not submit a court disposition indicating the resolution of this arrest. The applicant claimed on his Form I-485 LIFE application that he was arrested three times for driving while under the influence (DUI) and once for driving without a license. The applicant was convicted of the charge of driving under the influence 1st Offense on July 13, 2001 and for driving with a suspended license on August 29, 2001. The applicant has not provided dispositions for the other two DUI charges. Therefore, the applicant has not proved that he is admissible to the United States and for this reason as well, is not eligible for temporary residence in the United States.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.